

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF SOUTH DAKOTA

3 CENTRAL DIVISION

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5 UNITED STATES OF AMERICA, \* 3:18-MJ-00068-MAM

\*

6 Plaintiff,

\*

Pierre, South Dakota

7 -vs-

\*

December 12, 2018

8 KIMO JOHN LITTLE BIRD,

\*

9 Defendant.

\*

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10 \* \* \* \* \*

11 TRANSCRIPT OF

INITIAL APPEARANCE

12 (Criminal Complaint - District of Nevada)

13 BEFORE THE HONORABLE MARK A. MORENO,  
UNITED STATES MAGISTRATE JUDGE

14 \* \* \* \* \*

15 APPEARANCES:

16 Counsel for Plaintiff: MR. JAY P. MILLER  
17 Assistant United States Attorney  
225 South Pierre Street, #337  
18 Pierre, South Dakota 57501

19 Counsel for Defendant: MR. EDWARD G. ALBRIGHT  
20 Assistant Federal Public Defender  
101 South Pierre Street, Third Floor  
21 Pierre, South Dakota 57501

22 Transcriber: Connie J. Heckenlaible, RPR  
Official Court Reporter  
225 S. Pierre Street, #419  
Post Office Box 7147  
23 Pierre, South Dakota 57501

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December 12, 2018

(In open court at 2:06 p.m.)

THE COURT: All right. We'll be in session in the case of United States of America versus Kimo John Little Bird.

This is the time set by the Court for proceedings here in the District of South Dakota on a Criminal Complaint charging one count of failure to register as a sex offender. That Criminal Complaint is filed in the District of Nevada in Las Vegas. The case in Nevada is 2:18-MJ-000848-NJK. The case before this Court is 18-MJ-68.

Appearing as counsel at this proceeding is Jay Miller for the Government; Ed Albright for the Defense.

Mr. Albright, because identity potentially could be at issue, I'd ask, is it an issue and is it a problem with the Court inquiring of the gentleman next to you if he's the Defendant named in the Criminal Complaint?

MR. ALBRIGHT: Your Honor, identity is not an issue and it's not a problem for you to inquire.

THE COURT: All right. The Court should say, it's aware that Mr. Little Bird was just recently sentenced this week in the Northern Division of this District on a revocation -- supervised release revocation case and received a custody sentence of 24 months.

Mr. -- sir, is your name Kimo John Little Bird?

THE DEFENDANT: Yes, it is.

1           THE COURT: And Mr. Little Bird, how old are you?

2           THE DEFENDANT: 37.

3           THE COURT: And you and I were -- we met before. I  
4 think I handled your -- some of the initial proceedings in your  
5 Northern Division or Aberdeen case. You certainly look  
6 familiar.

7           Mr. Little Bird, what's your date of birth?

8           THE DEFENDANT: September 29, 1981.

9           THE COURT: And how far have you gone in school?

10          THE DEFENDANT: I got my GED.

11          THE COURT: All right. And are you able to read, write  
12 and understand the English language?

13          THE DEFENDANT: Yes, I am.

14          THE COURT: Now, Mr. Little Bird, the District of  
15 Nevada has filed a Criminal Complaint charging you with the  
16 offense that I just made mention of. Do you have a copy of  
17 that Criminal Complaint there in front of you?

18          THE DEFENDANT: Yes, I do.

19          THE COURT: Have you had a chance to read it and go  
20 over it with Mr. Albright?

21          THE DEFENDANT: Yes, I have.

22          THE COURT: I don't want to know if what is in that  
23 Complaint is true or not, just if you understand the  
24 allegations. Do you?

25          THE DEFENDANT: Yes, I do.

1                   THE COURT: Mr. Miller, what would be the maximum  
2 penalty that Mr. Little Bird faces if convicted of the charged  
3 offense?

4                   MR. MILLER: Your Honor, I don't have any paperwork  
5 with me so I don't know. I didn't even know this hearing was  
6 happening.

7                   THE COURT: What would be the maximum penalty if -- for  
8 any 2250 SORNA offense?

9                   MR. MILLER: Well, I happen to have that because the  
10 case I did think I was appearing on is the same type of case.  
11 So it's a SORNA, it is, I believe, 10 years in custody; a  
12 \$250,000 fine, or both such imprisonment and fine. Following  
13 any period of incarceration, there has to be a mandatory  
14 minimum period of supervised release of five years, up to  
15 possible life on supervised release, with all but one  
16 exception. If the Defendant were to violate the terms and  
17 conditions of his supervised release, I believe he can have an  
18 additional two years incarceration, but if he's convicted of  
19 certain various types of offenses related to the SORNA  
20 violations, then he's again looking at a mandatory minimum of  
21 five years up to life.

22                  Because I'm doing this from the top of my head, Mr.  
23 Albright can correct me if I said anything incorrect.

24                  MR. ALBRIGHT: That's correct. That five-year  
25 mandatory minimum custody would be if it's a -- if it's a

1 commission of a violation of another sex offense or  
2 transportation of minors or kidnapping and the like. There's a  
3 section in every plea agreement that sets forth those. Other  
4 than that, the maximum on a violation of supervised release is  
5 24 months.

6 THE COURT: All right. Mr. Little Bird, did you  
7 understand that penalty as it was explained and then further  
8 clarified?

9 THE DEFENDANT: Yes.

10 THE COURT: Now, Mr. Little Bird, you have certain  
11 rights with respect to this Complaint and these proceedings.

12 First, you have the right to remain silent. Understand  
13 that anything that you say here today or at any later point in  
14 time can be used against you by the Government in an effort to  
15 get you convicted of this offense. Do you understand that?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: Second, you have the right to be  
18 represented by a lawyer, both here in the District of South  
19 Dakota and in the District of Nevada where the charge is  
20 pending. If you don't have the money to hire a lawyer, one can  
21 be appointed for you at Government expense. Do you understand  
22 that?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: Now, I see that a lawyer was appointed for  
25 you in Nevada on the revocation matter and the removal incident

1 to it.

2 You -- a lawyer was appointed -- I think it was by  
3 me -- on the revocation here in the District of South Dakota.  
4 I also have a copy of the -- your affidavit that you filed  
5 in -- in Nevada dated September 14, 2018 in which you requested  
6 a court appointed lawyer. I'll take judicial notice that  
7 you've been in custody ever since that time.

8 Based on the affidavit, I will appoint the Federal  
9 Public Defender's Office in and for the Dakotas to represent  
10 you on any proceedings here in the District of South Dakota. I  
11 will not require that you pay anything for those services and  
12 I'll make your appointment effective from today, December 12,  
13 2018.

14 So Mr. Albright and his office will be representing you  
15 while you are here in South Dakota and for any proceedings --  
16 further proceedings that may be held in connection with the  
17 Complaint.

18 Now, do you understand all that, Mr. Little Bird?

19 THE DEFENDANT: Yes, I do.

20 THE COURT: Now, Mr. Little Bird, you have the right to  
21 have what's called an identity hearing. That's a hearing to be  
22 held in front of myself in which I would have to determine  
23 whether you're the same individual named in the Complaint and  
24 in the arrest warrant that was issued based on it.

25 And the reason for that is to simply make sure that

1 before you're directed to appear in Nevada, the right person is  
2 before the Court and is sent to Nevada. Like any legal right,  
3 you can waive or give up that right if you want to. If you do  
4 that, I will simply order that the Marshal Service transport  
5 you forthwith to Nevada.

6 Now, forthwith sounds like it's going to happen  
7 quickly, but the reality is you wind up getting on a transport  
8 that will take you to Oklahoma City and I can't tell you  
9 whether it will be two days or two weeks between when you leave  
10 here and you get to Las Vegas. All I can tell you is that  
11 you'll be going there through that transit system.

12 But what I need to know from you is whether you want to  
13 have an identity hearing and make the Government prove that  
14 they got the right person, the person named in the Criminal  
15 Complaint and that person is now before the Court. Is that  
16 something that you want or you're willing to give up, sir?

17 THE DEFENDANT: No, your Honor, I'd rather not waste  
18 the Court's time.

19 THE COURT: All right. So it's your desire to waive or  
20 give up your right to an identity hearing?

21 THE DEFENDANT: Yeah -- yes, it is.

22 THE COURT: And are you doing so freely and  
23 voluntarily, Mr. Little Bird?

24 THE DEFENDANT: Yes, I am.

25 THE COURT: And are you doing so after talking to Mr.

1       Albright about it in order to make an informed decision?

2                  THE DEFENDANT: Yes.

3                  THE COURT: All right. The Court will accept the  
4 Defendant's waiver of his right to an identity hearing and will  
5 direct that you forthwith be -- well, that he be held in the  
6 custody of the Marshal Service and thereafter forthwith  
7 transported to the District of Nevada in Las Vegas for further  
8 proceedings on the Complaint.

9                  Mr. Albright, in this process, I wanted to make sure,  
10 were you able to discuss with Mr. Little Bird his rights under  
11 Rules 5, 5.1, 20 and 40 which relate to an identity hearing and  
12 removal proceedings?

13                  MR. ALBRIGHT: Yes, I have.

14                  THE COURT: And are you satisfied that he understands  
15 those?

16                  MR. ALBRIGHT: I am.

17                  THE COURT: All right.

18                  MR. ALBRIGHT: And also just for the record, by waiving  
19 the identity hearing and consenting to transfer, Mr. Little  
20 Bird is in no way making any admissions of guilt toward the  
21 crime alleged.

22                  THE COURT: That will be noted and, Mr. Albright, to  
23 the extent necessary -- and I think it may be necessary -- Mr.  
24 Little Bird is entitled to certain rights on the Criminal  
25 Complaint, perhaps and including a right to a preliminary

1 hearing. I assume he does not waive or give up any of those  
2 rights that he has with respect to the Complaint.

3 MR. ALBRIGHT: Correct. He would reserve those rights  
4 to be addressed when he arrives in the District of Nevada.

5 THE COURT: All right. Mr. Miller, out of curiosity,  
6 were you or your office apprised of this Complaint because it  
7 seems to me it might have been something that could have been  
8 addressed up in Aberdeen as part of any agreement reached on  
9 the revocation matter.

10 MR. MILLER: I can tell you my first knowledge of this  
11 matter is when you announced the Defendant's name was Kimo  
12 Little Bird, which is not the case I came down here for.

13 THE COURT: Okay.

14 MR. MILLER: I guess that answers your question.

15 THE COURT: Well, you know, and obviously it's the  
16 Government and the prosecution's decision to handle this as it  
17 sees fit and in the interests of justice, but it seems rather  
18 odd to me that someone would be appearing on a Criminal  
19 Complaint having to be -- having to answer the -- a SORNA  
20 offense in Nevada when that Complaint was filed during the  
21 pendency of a revocation case -- a supervised release  
22 revocation case in which the Defendant received 24 months.

23 It also seems odd to me that this would be something  
24 pursued when the time period, or at least part of it, in the  
25 Complaint track with the misconduct time period that was

1 admitted to in the revocation case. Now, I'm assuming that  
2 they're related.

3 But in the interests of justice, I would simply ask,  
4 Mr. Miller, to see if you could contact or someone could  
5 contact your colleagues and find out whether they want to  
6 proceed on this matter in light of Judge Kornmann's sentence  
7 that he imposed just earlier this week.

8 Mr. Albright, also, I would ask that you contact your  
9 colleagues in the Public Defender's Office in the District of  
10 Nevada and see if that's a dialogue that could be had between  
11 that office and the U.S. Attorney's Office to see if that  
12 office, notwithstanding Judge Kornmann's sentence, still wants  
13 to proceed with it. And if it does, then fine, everybody is on  
14 the same page. But I don't know if Nevada knows what's -- what  
15 went on here and it seems to me -- my guess is that South  
16 Dakota didn't know what was going on in Nevada and I'm just  
17 trying to get everybody on the same page.

18 MR. MILLER: And all's I can tell you, Judge, is that  
19 this -- I didn't know anything about this case until I walked  
20 in here and you announced the Defendant's name. I have  
21 nothing. Sometimes this -- these documents when they're filed  
22 are sealed and if they are, I won't be able to see them to find  
23 out who the AUSA is.

24 Is there anything in the documentation that you have  
25 that identifies who my colleague in Nevada is?

1 MR. ALBRIGHT: Your Honor --

2 THE COURT: Yes.

3 MR. MILLER: Never mind. Trevor has that.

4 MR. ALBRIGHT: It is on the -- it's on the first page  
5 of the Complaint in the upper left hand.

6 THE COURT: The individual's Elham, E-L-H-A-M, Roohani,  
7 spelled R-O-O-H-A-N-I. And he's an Assistant United States  
8 Attorney for the District of Nevada. I also have his bar  
9 number if that matters.

10 MR. MILLER: I don't need that.

11 THE COURT: Mr. Miller, the telephone number of that  
12 office is 702-388-6336.

13 MR. MILLER: I will follow up on this yet today.

14 MR. ALBRIGHT: Your Honor.

15 THE COURT: Yes.

16 MR. ALBRIGHT: Do you have an extra copy of Mr. Little  
17 Bird's Judgment from Judge Kornmann --

18 THE COURT: I do.

19 MR. ALBRIGHT: -- that I could give to Mr. Miller and  
20 maybe he could fax it to that AUSA to show what happened in  
21 court.

22 THE COURT: I do.

23 Now, there -- and I want to say with a little  
24 hesitation, that Judgment is apt to be amended, Mr. Albright --

25 MR. ALBRIGHT: Yeah, I can --

1                   THE COURT: Mr. Miller, that Judgment is likely to be  
2 amended. The time period -- the custodial time period is not  
3 going to be affected. I think the only amendment would be Mr.  
4 Albright had requested that Mr. Little Bird serve his time in  
5 Marion, Illinois, and I think that is not reflected in the  
6 Judgment you have and Mr. Albright has made an attempt to ask  
7 that the Judgment be amended with that addition and no other  
8 respects.

9                   Do I have that correct, Mr. Albright?

10                  MR. ALBRIGHT: That is correct. I saw a copy of the  
11 Judgment this morning. It did not have the recommendation to  
12 Marion, Illinois in there.

13                  I contacted Susan Margolies -- or emailed her, she then  
14 emailed that to Barb and that then got passed on to Savannah  
15 Peterson, I believe, the probation officer, and they were going  
16 to do an amended judgment. But that only affects the  
17 recommendation of a particular facility that he go to, that  
18 being Marion, Illinois. It doesn't affect the term of custody.

19                  So there may -- there should be an amended judgment  
20 that should be coming somewhat soon. But that's -- that would  
21 be the only change.

22                  THE COURT: All right. So Mr. Little Bird, long story  
23 short, you're going to be remanded -- you're remanded to the  
24 custody of the Marshal Service. They will hold you here in  
25 Hughes County. They will be making arrangements to have you

1 transported to Las Vegas unless the people in Las Vegas, the  
2 U.S. Attorney's Office there, dismiss the Complaint. And I  
3 guess that will be something you'll have to learn from your  
4 lawyer.

5 But I've at least got in motion hopefully a process by  
6 which everyone knows what went on -- the people in Nevada know  
7 that you're looking at 24 months here in South Dakota, and  
8 being asked whether in light of that, they want to pursue this  
9 charge against you. If they don't, then you can start serving  
10 your 24 months and clicking away at that. If they do, then it  
11 will be up to the judge there as to what happens to you in the  
12 event that there's a conviction.

13 THE DEFENDANT: Thank you, your Honor.

14 THE COURT: All right. There being nothing further,  
15 we'll be in recess.

16 (Conclusion of Hearing at 2:24 p.m.)

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1 STATE OF SOUTH DAKOTA)

2 )

CERTIFICATE

3 COUNTY OF HUGHES )

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6 I, Connie Heckenlaible, Official United States District  
7 Court Reporter, Registered Professional Reporter and Notary  
8 Public in and for the State of South Dakota, do hereby  
9 certify that the above and foregoing transcript has been  
10 transcribed to the best of my ability from the District  
11 Court's FTR recording system consisting of pages 1 through  
12 13.

13 I further certify that I am not a relative or employee  
14 or attorney or counsel of any of the parties hereto, nor a  
15 relative or employee of such attorney or counsel; nor do I  
16 have any interest in the outcome or events of the action.

17 IN TESTIMONY WHEREOF, I have hereto set my hand and  
18 official seal this 10th day of January, 2019, at Pierre,  
19 South Dakota.

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25

/s/ Connie Heckenlaible  
Connie Heckenlaible  
Registered Professional Reporter  
225 S. Pierre Street, #419  
Post Office Box 7147  
Pierre, South Dakota 57501  
(605) 945-4622  
Connie\_Heckenlaible@sdd.uscourts.gov

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